

STATE OF MICHIGAN
COURT OF APPEALS

ESTATE OF SUPRINA MCCALL, a Protected
Individual, by JIMMIE MCCALL, Individually
and as Guardian and Co-Conservator,

UNPUBLISHED
April 10, 2014

Plaintiff-Appellant,

and

JOHN M. CHASE, JR., Co-Conservator,

Plaintiff-Appellee,

v

HENRY FORD HEALTH SYSTEM, a/k/a
HENRY FORD HOSPITAL, and DETROIT
MEDICAL CENTER,

No. 313681
Wayne Circuit Court
LC No. 10-013897-NH

Defendants.

Before: STEPHENS, P.J., and SAAD and BOONSTRA, JJ.

PER CURIAM.

Plaintiff Jimmie McCall appeals the trial court's order that approved a settlement between plaintiffs and defendant, Henry Ford Health System ("Henry Ford"), and permitted the following distribution of proceeds: (1) 95 percent to plaintiff Estate of Suprina McCall ("the estate"); and (2) the remaining 5 percent to Jimmie McCall. For the reasons stated below, we affirm.

"A trial court's decision concerning the distribution of settlement proceeds is reviewed under the clearly erroneous standard." *McTaggart v Lindsey*, 202 Mich App 612, 615–616; 509 NW2d 881 (1993) (internal citations omitted); see also *Reed v Breton*, 279 Mich App 239, 242; 756 NW2d 89 (2008). "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made." *In re Estate of Kubiskey*, 236 Mich App 443, 451; 600 NW2d 439 (1999). "If the reviewing court determines that the trial court made a mistake, it will then substitute its own appraisal of the record and reduce damages or conditionally affirm the award." *McTaggart*, 202 Mich App at 616.

McCall incorrectly asserts that he is entitled to a distribution greater than 5 percent of the settlement proceeds because his wife's injury caused him substantial loss. At the outset, we note that he does not offer any case law or evidence to establish that the trial court erred in its distribution of the settlement proceeds, and thus has abandoned the issue. See *Prins v Michigan State Police*, 299 Mich App 634, 647; 831 NW2d 867 (2013).

Were we nonetheless to entertain his suit, McCall has failed to show clear error. Similar cases¹ hold that a trial court may reduce the distribution of settlement proceeds to a plaintiff who fails to establish a familial relationship between himself and the deceased. *McTaggart*, 202 Mich App at 616–617; *Kubiskey*, 236 Mich App at 451; and *In re Claim of Carr*, 189 Mich App 234, 239; 471 NW2d 637 (1991) (holding that son deserved less compensation than other family members because of his “strained” relationship with mother and prolonged absence from her life, and that “the only reasonable measure of the actual destruction caused [by a poor/non-existent relationship] is to assess the type of relationship the decedent had with the claimant in terms of objective behavior as indicated by the time and activity shared and the overall characteristics of the relationship”).

Here, the trial court based its decision on the fact that McCall and Suprina were separated and only occasionally saw one another before her injury, and that McCall evinced little interest in Suprina's health after her injury. Specifically, Suprina resides at a nursing home and is not cared for by McCall. Moreover, as it pertains to the issue at bar, the trial court properly took into account McCall's relatively infrequent visits to the nursing home

In sum, McCall failed to show he had a close family relationship with his estranged wife. Moreover, the trial court correctly held that the distribution of the settlement should reflect this lack of a close family relationship. See *Carr*, 189 Mich App at 238–239.

Affirmed.

/s/ Cynthia D. Stephens
/s/ Henry William Saad
/s/ Mark T. Boonstra

¹ This case is unusual in that it: (1) relates to the distribution of settlement proceeds in a negligence action; and (2) *does not* involve wrongful death (or allegations of wrongful death). However, we believe that the principles outlined in Michigan cases involving the distribution of settlement proceeds after wrongful death are applicable to this suit.